

AMENDED IN ASSEMBLY MARCH 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 46

Introduced by Assembly Members Lackey and Melendez

(Principal coauthors: Senators Galgiani, Nielsen, and Vidak)

**(Coauthors: Assembly Members ~~Baker and Steinorth~~ Travis Allen,
Baker, Brough, Gallagher, Gonzalez, Kim, Patterson, Rodriguez,
Steinorth, Waldron, and Wilk)**

(Coauthors: Senators Anderson, Huff, and Stone)

December 1, 2014

An act to amend Sections 11350 and 11377 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 46, as amended, Lackey. Controlled substances.

(1) Existing law, as amended by the Safe Neighborhoods and Schools Act, a measure approved by the voters at the November 4, 2014, statewide general election, generally provides that the possession of Ketamine, gamma hydroxybutyric acid (GHB), and flunitrazepam is a misdemeanor, punishable by imprisonment in the county jail for not more than one year. Existing law also provides that when a person has one or more prior convictions for certain enumerated crimes, his or her possession of GHB is a felony, punishable by imprisonment in a county jail for 16 months, or 2 or 3 years, and his or her possession of Ketamine and flunitrazepam is either a misdemeanor, punishable by imprisonment in the county jail for not more than one year, or a felony, punishable by imprisonment in a county jail for 16 months, or 2 or 3 years.

This bill would instead provide, without regard for a person's prior convictions, that possession of Ketamine and flunitrazepam is either a

misdemeanor, punishable by imprisonment in a county jail for not more than one year, or a felony, punishable by imprisonment in a county jail for 16 months, or 2 or 3 years. The bill would also provide that the possession of GHB by a person who does not have a prior conviction for those certain enumerated crimes is either a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or a felony, punishable in a county jail for 16 months, or 2 or 3 years.

(2) Proposition 47 provides that its provisions may be amended by a statute that is consistent with and furthers its intent and that is passed by a $\frac{2}{3}$ vote of each house of the Legislature and is signed by the Governor. Proposition 47 also provides that the Legislature may, by majority vote, amend, add, or repeal provisions to further reduce the penalties for offenses it addresses.

The California Constitution authorizes the Legislature to amend or repeal an initiative statute by another statute that becomes effective when approved by the electors.

This bill would provide that its provisions become effective only upon approval of the voters at the next statewide election, and would provide for the submission of this measure to the voters for approval at that election.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Ketamine, gamma hydroxybutyric acid (GHB), and
- 4 Rohypnol are drugs often characterized as “date rape” drugs.
- 5 (b) GHB is a central nervous system depressant that was
- 6 approved for the treatment of narcolepsy. GHB has no color or
- 7 taste, and is frequently combined with alcohol to commit sexual
- 8 assault.
- 9 (c) Ketamine causes unconsciousness, hallucinations, loss of
- 10 body control, and numbing. Ketamine works very quickly, so
- 11 victims drugged with Ketamine only have a few seconds to react
- 12 before losing consciousness.
- 13 (d) Rohypnol, ~~commonly known as~~ *also known by its chemical*
- 14 *name of flunitrazepam*, and sometimes referred to as “roofies,”
- 15 impairs judgment and leaves victims drugged with Rohypnol

1 physically incapacitated. Memory loss and confusion under the
2 influence of this drug makes victims more vulnerable to rape.

3 (e) In order to deter the possession of Ketamine, GHB, and
4 Rohypnol by sexual predators and to take steps to prevent the use
5 of these drugs to incapacitate victims for purposes of sexual
6 exploitation, it is necessary and appropriate that an individual who
7 possesses one of these substances be subject to felony penalties.

8 SEC. 2. Section 11350 of the Health and Safety Code is
9 amended to read:

10 11350. (a) (1) Except as otherwise provided in this division,
11 every person who possesses (1) a controlled substance specified
12 in subdivision (b) or (c) of, or paragraph (1) or (2) of subdivision
13 (e) of, or paragraph (1) of subdivision (f) of, Section 11054,
14 specified in paragraph (14), (15), or (20) of subdivision (d) of
15 Section 11054, or specified in subdivision (b) or (c) of Section
16 11055, or specified in subdivision (h) of Section 11056, or (2) a
17 controlled substance classified in Schedule III, IV, or V which is
18 a narcotic drug, unless upon the written prescription of a physician,
19 dentist, podiatrist, or veterinarian licensed to practice in this state,
20 shall be punished by imprisonment in a county jail for not more
21 than one year, except that such person shall instead be punished
22 pursuant to subdivision (h) of Section 1170 of the Penal Code if
23 that person has one or more prior convictions for an offense
24 specified in clause (iv) of subparagraph (C) of paragraph (2) of
25 subdivision (e) of Section 667 of the Penal Code or for an offense
26 requiring registration pursuant to subdivision (c) of Section 290
27 of the Penal Code.

28 (2) (A) Except as otherwise provided in subparagraph (B) and
29 this division, every person who possesses a controlled substance
30 specified in paragraph (3) of subdivision (e) of Section 11054 shall
31 be punished by imprisonment in a county jail for not more than
32 one year or pursuant to subdivision (h) of Section 1170 of the Penal
33 Code.

34 (B) Except as otherwise provided in this division, every person
35 who has one or more prior convictions for an offense specified in
36 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e)
37 of Section 667 of the Penal Code or for an offense requiring
38 registration pursuant to subdivision (c) of Section 290 of the Penal
39 Code who possesses a controlled substance specified in paragraph
40 (3) of subdivision (e) of Section 11054 shall be punished by

1 imprisonment pursuant to subdivision (h) of Section 1170 of the
2 Penal Code.

3 (b) Except as otherwise provided in this division, whenever a
4 person who possesses any of the controlled substances specified
5 in subdivision (a), the judge may, in addition to any punishment
6 provided for pursuant to subdivision (a), assess against that person
7 a fine not to exceed seventy dollars (\$70) with proceeds of this
8 fine to be used in accordance with Section 1463.23 of the Penal
9 Code. The court shall, however, take into consideration the
10 defendant's ability to pay, and no defendant shall be denied
11 probation because of his or her inability to pay the fine permitted
12 under this subdivision.

13 (c) Except in unusual cases in which it would not serve the
14 interest of justice to do so, whenever a court grants probation
15 pursuant to a felony conviction under this section, in addition to
16 any other conditions of probation which may be imposed, the
17 following conditions of probation shall be ordered:

18 (1) For a first offense under this section, a fine of at least one
19 thousand dollars (\$1,000) or community service.

20 (2) For a second or subsequent offense under this section, a fine
21 of at least two thousand dollars (\$2,000) or community service.

22 (3) If a defendant does not have the ability to pay the minimum
23 fines specified in paragraphs (1) and (2), community service shall
24 be ordered in lieu of the fine.

25 SEC. 3. Section 11377 of the Health and Safety Code is
26 amended to read:

27 11377. (a) Except as authorized by law and as otherwise
28 provided in subdivision (b) or Section 11375, or in Article 3
29 (commencing with Section 4050) of Chapter 9 of Division 2 of
30 the Business and Professions Code, every person who possesses
31 a controlled substance which is (1) classified in Schedule III, IV,
32 or V, and which is not a narcotic drug, (2) specified in subdivision
33 (d) of Section 11054, except paragraphs (13), (14), (15), and (20)
34 of subdivision (d), (3) specified in paragraph (11) of subdivision
35 (c) of Section 11056, (4) specified in paragraph (2) or (3) of
36 subdivision (f) of Section 11054, or (5) specified in subdivision
37 (d), (e), or (f) of Section 11055, unless upon the prescription of a
38 physician, dentist, podiatrist, or veterinarian, licensed to practice
39 in this state, shall be punished by imprisonment in a county jail
40 for a period of not more than one year, except that such person

1 may instead be punished pursuant to subdivision (h) of Section
2 1170 of the Penal Code if that person has one or more prior
3 convictions for an offense specified in clause (iv) of subparagraph
4 (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal
5 Code or for an offense requiring registration pursuant to
6 subdivision (c) of Section 290 of the Penal Code.

7 (b) Every person who possesses a controlled substance specified
8 in subdivision (g) of Section 11056 or specified in paragraph (13)
9 of subdivision (d) of Section 11057 shall be punished by
10 imprisonment in a county jail for not more than one year or
11 pursuant to subdivision (h) of Section 1170 of the Penal Code.

12 (c) The judge may assess a fine not to exceed seventy dollars
13 (\$70) against any person who violates subdivision (a), with the
14 proceeds of this fine to be used in accordance with Section 1463.23
15 of the Penal Code. The court shall, however, take into consideration
16 the defendant's ability to pay, and no defendant shall be denied
17 probation because of his or her inability to pay the fine permitted
18 under this subdivision.

19 SEC. 4. (a) Sections 2 and 3 of this act amend the Safe
20 Neighborhoods and Schools Act, Proposition 47, an initiative
21 statute that was approved by the voters at the November 4, 2014,
22 statewide general election, and shall become effective only when
23 submitted to and approved by the voters.

24 (b) The Secretary of State shall submit Sections ~~2~~ 1, 2, and 3
25 of this act for approval by the voters at the next statewide election
26 pursuant to Section 9040 of the Election Code.